

(B) The branch or agency has maintained on a daily basis, over the past three quarters, eligible assets (determined consistent with applicable federal and state law) in an amount not less than 108 percent of the preceding quarter's average third party liabilities and sufficient liquidity is currently available to meet obligations to third parties;

(iv) Is not subject to a formal enforcement action or order by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the OCC; and

(v) Has not experienced a change in control during the preceding 12-month period in which a full-scope, on-site examination would have been required but for this section.

(2) *Discretionary standards.* In determining whether a Federal branch or agency is eligible for an 18-month examination cycle pursuant to this paragraph (b), the OCC may consider additional factors, including, but not limited to, whether:

(i) Any of the individual components of the ROCA rating of the Federal branch or agency is rated "3" or worse;

(ii) The results of any off-site supervision indicate a deterioration in the condition of the Federal branch or agency;

(iii) The size, relative importance, and role of a particular office when reviewed in the context of the foreign bank's entire U.S. operations otherwise necessitate an annual examination; and

(iv) The condition of the foreign bank gives rise to such a need.

(c) *Authority to conduct more frequent examinations.* Nothing in paragraph (a) or (b) of this section limits the authority of the OCC to examine any Federal branch or agency as frequently as the OCC deems necessary.

[63 FR 46120, Aug. 28, 1998]

Subpart B—Availability of Information Under the Freedom of Information Act

§ 4.11 Purpose and scope.

(a) *Purpose.* This subpart sets forth the standards, policies, and procedures that the OCC applies in administering

the Freedom of Information Act (FOIA) (5 U.S.C. 552) to facilitate the OCC's interaction with the banking industry and the public.

(b) *Scope.* (1) This subpart describes the information that the FOIA requires the OCC to disclose to the public (§ 4.12), and the three methods by which the OCC discloses that information under the FOIA (§§ 4.13, 4.14, and 4.15).

(2) This subpart also sets forth predisclosure notice procedures that the OCC follows, in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235), when the OCC receives a request under § 4.15 for disclosure of records that arguably are exempt from disclosure as confidential commercial information (§ 4.16). Finally, this subpart describes the fees that the OCC assesses for the services it renders in providing information under the FOIA (§ 4.17).

(3) This subpart does not apply to a request for records pursuant to the Privacy Act (5 U.S.C. 552a). A person requesting records from the OCC pursuant to the Privacy Act should refer to 31 CFR part I, subpart C, and appendix J of subpart C.

§ 4.12 Information available under the FOIA.

(a) *General.* In accordance with the FOIA, OCC records are available to the public, except the exempt records described in paragraph (b) of this section.

(b) *Exemptions from availability.* The following records, or portions thereof, are exempt from disclosure under the FOIA:

(1) A record that is specifically authorized, under criteria established by an Executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that Executive order;

(2) A record relating solely to the internal personnel rules and practices of an agency;

(3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

Comptroller of the Currency, Treasury

§ 4.14

(4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person (see § 4.16 for notice requirements regarding disclosure of confidential commercial information);

(5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees;

(6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of the right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;

(v) Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;

(vi) Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or

(vii) Endanger the life or physical safety of any individual;

(8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other

agency responsible for regulating or supervising financial institutions; and

(9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

(c) *Discretionary disclosure of exempt records.* Even if a record is exempt under paragraph (b) of this section, the OCC may elect, on a case-by-case basis, not to apply the exemption to the requested record. The OCC's election not to apply an exemption to a requested record has no precedential significance as to the application or nonapplication of the exemption to any other requested record, regardless of who requests the record or when the OCC receives the request. The OCC will provide predisclosure notice to submitters of confidential commercial information in accordance with § 4.16.

(d) *Segregability.* The OCC provides copies of reasonably segregable portions of a record to any person properly requesting the record pursuant to § 4.15, after redacting any portion that is exempt under paragraph (b) of this section.

§ 4.13 Publication in the Federal Register.

The OCC publishes certain documents in the FEDERAL REGISTER for the guidance of the public, including the following:

(a) Proposed and final rules; and

(b) Certain notices and policy statements of concern to the general public.

§ 4.14 Public inspection and copying.

(a) *Available information.* Subject to the exemptions listed in § 4.12(b), the OCC makes the following information readily available for public inspection and copying:

(1) Any final order, agreement, or other enforceable document issued in the adjudication of an OCC enforcement case, including a final order published pursuant to 12 U.S.C. 1818(u);

(2) Any final opinion issued in the adjudication of an OCC enforcement case;

(3) Any statement of general policy or interpretation of general applicability not published in the FEDERAL REGISTER;